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UNCLAS BRASILIA 001816

SIPDIS

EB/TRA/AN FOR BRIAN GRIMM

E.O. 12958: N/A

TAGS: [FAIR](#) [KTIA](#)

SUBJECT: BRAZIL CIVAIR: RESOLVING TAXATION DISPUTE

REF: SECSTATE 27268

1. Post has received a diplomatic note from the Ministry of Foreign Affairs replying to our February 16 note (reftel) regarding taxation of airlines in the U.S. The Brazilian note states that, based on our assurance that Brazilian airlines are not subject to social taxes equivalent to certain Brazilian taxes, the GoB will extend reciprocal treatment to U.S. carriers, including the cancellation of any social taxes levied against U.S. air carriers prior to August 24, 2001. This has been an issue for one U.S. air cargo carrier, which had faced a longstanding (and large) social tax assessment on its Brazil operations prior to the entry into force of our most recent bilateral aviation agreement. The bilateral agreement exempts all U.S. carriers from these taxes. The Ministry of Foreign Affairs intends to publish the exchange of notes in their equivalent of the Federal Register, which should allow the affected U.S. air cargo carrier to have the tax assessment overturned. An unofficial translation follows in paragraph 2. The original will be pouched to EB/TRA/AN Brian Grimm.

2. Begin text.

URGENT

DSF/DEUC/049/EFIN-ETRA

The Ministry of Foreign Affairs presents its compliments to the Embassy of the United States of America, and with reference to your Diplomatic Note No. 54 of February 16, 2005, notes that, as mentioned in your note, "Brazilian airline transport carriers operating to the U.S. have not been and are not now subject to taxes equivalent to the Brazilian "Contribuicao para o Programa de Integracao Social (PIS)", "Contribuicao Social para o Fundo de Investimento Social (FINSOCIAL)" and "Contribuicao Social para o Financiamento da Seguridade Social (COFINS)."

The Ministry of Foreign Affairs, based on the existence of reciprocal treatment for Brazilian carriers, is pleased to confirm that:

a) in accordance with article 14, V, paragraph 1, of Provisional Measure 2.158-35, dated August 24, 2001, U.S. air transport carriers that operate in Brazil are exempt from the tax contributions denominated "Contribuicao para o Programa de Integracao Social (PIS), and Contribuicao Social para o Financiamento da Seguridade Social (COFINS)"; and,

b) in accordance with article 4, and its paragraphs, of Law no. 10.560, dated November 13, 2002, as amended by article 20 of Law no. 11.051, dated December 29, 2004, and procedures established in Joint Decree PGFN/SRF/no. 6, dated December 30, 2003, the debt attributed to U.S. air transport carriers operating in Brazil related to contributions denominated "Contribuicao para o Programa de Integracao Social (PIS)", "Contribuicao Social para o Fundo de Investimento Social (FINSOCIAL)", and "Contribuicao Social para o Financiamento da Seguridade Social (COFINS)" that took place up to the day immediately prior to August 24, 2001, the date that art. 14, V, and paragraph 1 of Provisional Measure no. 2.158-35 took effect, are canceled and corresponding entries are declared null and void for all purposes.

End Text.

CHICOLA